# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>May 19, 2015 |
| v | No. 320554<br>Wayne Circuit Court |
| DAVID EDGAR DICKERSON,<br><br>Defendant-Appellant. | LC No. 13-008111-FC |

Before: HOEKSTRA, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b(1).[1] Defendant was sentenced to 40 to 75 years' imprisonment for the second-degree murder conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

## I. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant first contends that he received ineffective assistance of counsel at trial due to numerous errors made by his defense counsel. We disagree.

A timely motion for a new trial, raising the issue of ineffective assistance of counsel is sufficient to preserve the issue for appellate review. *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000). Alternatively, a criminal defendant may request a *Ginther* hearing, to make a separate factual record supporting the claim of ineffective assistance of counsel, to preserve the issue for appeal. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973). Defendant did not move for a new trial or a *Ginther* hearing in the trial court. Therefore, this issue is unpreserved for appeal.

"Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law." *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). Generally, the trial court's findings of fact are reviewed for clear error and the questions of

[1] Defendant was originally charged with first-degree murder, MCL 750.316(1)(a), but the jury ultimately convicted him of the lesser included offense of second-degree murder.

constitutional law are reviewed de novo. *Id.* Unpreserved claims of ineffective assistance of counsel can still be reviewed, however, this review is limited to errors apparent on the record below. *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004).

The right to counsel during a criminal trial is guaranteed by both the United States and Michigan Constitutions. US Const, Am VI; Const 1963, art 1, § 20. This right is not merely to any assistance of counsel, but to effective assistance of counsel. *United States v Cronic*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984); *People v Vaughn*, 491 Mich 642, 669; 821 NW2d 288 (2012). This right is substantive in nature, and concentrates on the actual assistance received. *People v Pubrat*, 451 Mich 589, 596; 548 NW2d 595 (1996).

Effective assistance of counsel is presumed and the challenging defendant bears the heavy burden of proving otherwise. *People v Seals*, 285 Mich App 1, 17; 776 NW2d 314 (2009). In order to show ineffectiveness of counsel, a defendant generally must show that: (1) counsel's performance did not meet an objective standard of reasonableness under prevailing professional norms; (2) there is a reasonable probability that, but for counsel's errors, the results of the proceedings would be different; and (3) the result that did occur was fundamentally unfair or unreliable. *People v Lockett*, 295 Mich App 165, 187; 814 NW2d 295 (2012). This Court will not substitute its judgment for that of trial counsel on matters of strategy, nor will it employ the benefit of hindsight to assess the competence of counsel. *People v Payne*, 285 Mich App 181, 190; 774 NW2d 714 (2009).

Defense counsel has wide discretion regarding matters of trial strategy. *People v Heft*, 299 Mich App 69, 83; 829 NW2d 266 (2012). Counsel does not render ineffective assistance by conceding certain points at trial, including conceding guilt of a lesser offense; only a complete concession of guilt constitutes ineffective assistance of counsel. *People v Emerson* (*After Remand*), 203 Mich App 345, 349; 512 NW2d 3 (1994). Decisions regarding what evidence to present, *People v Horn*, 279 Mich App 31, 39; 755 NW2d 212 (2008), and whether to call or question witnesses, *People v Russell*, 297 Mich App 707, 716; 825 NW2d 623 (2012), are presumed to be matters of trial strategy. Further, declining to raise objections to procedures can be sound trial strategy. *People v Unger*, 278 Mich App 210, 242, 253; 749 NW2d 272 (2008).

Defendant first claims that defense counsel was ineffective for failing to challenge defendant's warrantless arrest. At trial, Detroit police officer David Kline testified that defendant was arrested after the police received information that he, a homicide suspect, was present at a home located at 17211 Monica Street, Detroit, Michigan. Pursuant to MCL 764.15(c), a police officer may arrest a person without a warrant if "[a] felony in fact has been committed and the [police officer] has reasonable cause to believe the person committed it." See also *People v Tierney*, 266 Mich App 687, 705; 703 NW2d 204 (2005) (stating same). At this point in the officers' investigation, they had already analyzed the phone records pertaining to defendant's cellular phone, and they knew that defendant had called the victim, Brian Wiley, shortly before his death. Based upon the testimony elicited at trial, it is clear that the officers had sufficient probable cause to arrest defendant without a warrant, and any challenge to defendant's arrest would have been meritless. "Ineffective assistance of counsel cannot be predicated on the failure to make a frivolous or meritless motion," *People v Riley*, 468 Mich 135, 142; 659 NW2d 611 (2003), and therefore, defense counsel was not ineffective for failing to challenge defendant's warrantless arrest.

Second, defendant claims that defense counsel was ineffective for failing to challenge the warrantless seizure of the information contained in his cellular phone. Despite defendant's contention, at trial the only information relating to defendant's cellular phone was presented through cellular phone records that the prosecution obtained from the phone company. As this Court has noted, a defendant has no expectation of privacy in the numbers dialed or the messages sent from their cellular phone because the caller disclosed this information to the third-party telephone company. *People v Gadomski*, 274 Mich App 174, 180; 731 NW2d 466 (2007). Furthermore, the phone records presented by the prosecution at trial, while relating to defendant's use of his own phone, did not come from any search of the phone itself. They were provided as records that the phone companies kept in the course of normal business. Therefore, defendant had no privacy interest in the phone records and any challenge to their admission would have been meritless. In fact, defendant would not even have standing to challenge the admission of the phone records because they were held by a third party. See *People v Earls*, 477 Mich 1119; 730 NW2d 241 (2007) ("The Court of Appeals also clearly erred in holding that defendant has standing to challenge the admission of records held by third parties. As a general rule, criminal defendants do not have standing to assert the rights of third parties.") (internal citation omitted; internal quotation marks omitted).[2] Thus, any motion to challenge the information provided in the phone records would have meritless, and again, "[i]neffective assistance of counsel cannot be predicated on the failure to make a frivolous or meritless motion." *Riley*, 468 Mich at 142.

Third, defendant claims that defense counsel was ineffective for failing to obtain the cellular phone records of Tashawn Williams, defendant's ex-girlfriend and a witness at trial. At a pretrial hearing, defense counsel noted that defendant believed that there were some text messages from "one of the complaining witnesses" on one of the phones that the police had confiscated. In response, the prosecutor assured defense counsel that she had copies of all of the records in the prosecutor's possession. Defendant now claims that defense counsel's failure to obtain these vaguely described cellular phone records constituted ineffective assistance of counsel. As noted above, decisions regarding what evidence to present are presumed to be matters of trial strategy. *Horn*, 279 Mich App at 39. And though the failure to properly investigate a case, i.e., failure to obtain exculpatory evidence, can constitute ineffective assistance of counsel, a defendant must show prejudice resulting from the lack of preparation. *People v Trakhtenberg*, 493 Mich 38, 51-55; 826 NW2d 136 (2012). Defendant has never provided any proof, by affidavit or other means, regarding what these alleged text messages contained, except for defendant's general claims on appeal that they would have shown Williams was being untruthful. On this basis, defendant has not shown any prejudice arising out of defense counsel's alleged failure to obtain text messages that may or may not exist, and therefore, he has failed to overcome the heavy burden of proving ineffective assistance of counsel. *Seals*, 285 Mich App at 17.

[2] Supreme Court orders, like the one in *Earls*, which "include a decision with an understandable rationale establish binding precedent." *People v Giovannini*, 271 Mich App 409, 414; 722 NW2d 237 (2006).

Fourth, defendant claims that defense counsel was ineffective for conceding that defendant committed a murder at trial. In support of this contention, defendant cites the following portion of defense counsel's opening statement:

> [This case is] not a who did it. It's what happened? What was the degree? What was the thought at the time? Was it premeditated?

Defendant claims that these statements conceded to the jury that defendant had committed murder, and the only question left was to determine whether it was first-degree or second-degree murder. A cursory view of defense counsel's opening statement shows that her intent was to direct the jury to the *mens rea* requirement to find defendant guilty of a homicide offense. Defense counsel, it appears, was making it clear to the jury that there was no question that defendant shot Wiley, but the issue at trial was whether defendant did so intentionally, or if he was acting in self-defense. However, even if this statement could be construed as an ambiguous concession that defendant murdered Wiley, any ambiguity was cleared up in defense counsel's closing argument when she was describing defendant's actions on the night of the shooting:

> [I]n [defendant's] mind at the time the first shot goes off, of course you're gonna [sic] be scared for your life. [Wiley] is much bigger than you. They're struggling. It goes off again. That, ladies and gentlemen, is not first[-]degree murder.
>
> That ladies and gentlemen, I know, sounds bad. But the law of self-defense, whether you like it or not, applies in this situation. And what crime was being committed if I'm retreating?
>
> I'm retreating. But you're not retreating. You're advancing on me. Said hey, man. Chill out. Cool out. You know it's not that serious. But it turned out to be that serious.

Thus, a fair reading of defense counsel's comments at trial shows that she was arguing that defendant shot Wiley in self-defense. Furthermore, even if defense counsel had conceded that defendant had committed a murder, and the only issue left was to determine if it was first-degree or second-degree murder, she still would not have been constitutionally ineffective. As noted above, it is not ineffective assistance to concede guilt of a lesser offense; only a complete concession of guilt constitutes ineffective assistance of counsel. *Emerson* (*After Remand*), 203 Mich App at 349.

Fifth, and finally, defendant claims that trial counsel was ineffective for failing to request a jury instruction on the issue of initial aggressors and withdrawal from conflict. CJI2d 7.18 provides:

> A person who started an assault on someone else [with deadly force / with a dangerous or deadly weapon] cannot claim that [he / she] acted in self-defense unless [he / she] genuinely stopped [fighting / (his / her) assault] and clearly let the other person know that [he / she] wanted to make peace. Then, if the other person kept on fighting or started fighting again later, the defendant had the same

> right to defend [himself / herself] as anyone else and could use force to save [himself / herself] from immediate physical harm.

A trial judge is not required to give a jury instruction if the theory or defense is not supported by the evidence. *People v Mills*, 450 Mich 61, 81; 537 NW2d 909 (1995), mod in part on other grounds 450 Mich 1212 (1995). In Michigan, the defense of self-defense is not available when a defendant is the initial aggressor unless he withdraws from any further encounter with the victim and communicates his withdrawal to the victim. *People v Kemp*, 202 Mich App 318, 322-323; 508 NW2d 184 (1993), abrogated on other grounds by statute, as noted in *People v Reese*, 491 Mich 127, 148-149, 151-157 (2012); see also CJI2d 7.18. Further, the decision whether to request certain jury instructions is a matter of trial strategy. *People v Sardy*, 216 Mich App 111, 116; 549 NW2d 23 (1996) ("Remaining are defendant's allegations that he was denied the effective assistance of counsel because of counsel's failure to object to prosecutorial misconduct and counsel's failure to ask for an instruction regarding lesser included offenses. In both cases, defendant fails to overcome his burden of showing that counsel's conduct did not constitute sound trial strategy.").

At trial, defendant was the only witness who testified to the events that occurred during his altercation with Wiley. Defendant admitted that he had sent a threatening message to Wiley, and that he arrived at Wiley's home late at night with a firearm. He claimed that he never intended to kill Wiley that night, and he had his firearm on him for "other reasons." Defendant testified that he waited for Wiley to come to the door, and after a few moments Wiley aggressively approached defendant, trying to fight. At this point, defendant immediately pulled his gun out of his pocket and pointed it at Wiley. After the two struggled for some time, and the handgun allegedly went off, nearly missing defendant, he became scared that Wiley was going to take the gun from him, so defendant shot Wiley. Based on defendant's own testimony, he was the initial aggressor because he sent Wiley a threatening text message and showed up unannounced at Wiley's home late at night, armed with a gun, on the same day he sent the message. Thereafter, defendant and Wiley immediately engaged in a physical altercation, during which defendant shot Wiley. Based upon this testimony from defendant, it is clear that defendant never "genuinely stopped [his assault] and clearly let the other person know that [he] wanted to make peace." CJI2d 7.18. Thus, at least arguably, the evidence elicited at trial does not support an instruction on defendant's withdrawal after being the initial aggressor, *Mills*, 450 Mich at 81, and defendant cannot overcome the presumption that defense counsel's decision not to request the instruction was a matter of trial strategy, *Sardy*, 216 Mich App at 116.

## II. JURY INSTRUCTIONS

Defendant next contends that the trial court abused its discretion in denying defendant's requests for instructions on the lesser included offenses of voluntary manslaughter and involuntary manslaughter. We disagree.

Issues of law arising from jury instructions are reviewed de novo on appeal, but a trial court's determination whether an instruction was applicable to the facts of the case is reviewed for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes. *People v Duenaz*, 306 Mich App 85, 90; 854 NW2d 531 (2014), lv pending. "The

defendant bears the burden of establishing that the asserted instructional error resulted in a miscarriage of justice." *People v Dupree*, 486 Mich 693, 702; 788 NW2d 399 (2010).

A trial judge must instruct the jury regarding the applicable law. *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005). Upon indictment for an offense that consists of different degrees, the jury may find the defendant guilty of a lesser degree of the offense charged in the indictment. MCL 768.32(1); *People v Smith*, 478 Mich 64, 69; 731 NW2d 411 (2007). "[A] requested instruction on a necessarily included lesser offense is proper if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it." *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002), overruled in part on other grounds by *People v Mendoza*, 468 Mich 527 (2003). "An appellate court must therefore review *all* of the evidence irrespective of who produced it to determine whether it provides a rational view to support an instruction on the lesser charge." *People v McMullan*, 488 Mich 922, 922; 789 NW2d 857 (2010).[3] "A necessarily lesser included offense is an offense whose elements are completely subsumed in the greater offense." *People v Mendoza*, 468 Mich 527, 540; 664 NW2d 685 (2003). "Consequently, when a defendant is charged with murder, an instruction for voluntary and involuntary manslaughter must be given if supported by a rational view of the evidence." *Id*. at 541.

To support a jury instruction for voluntary manslaughter, a rational view of the evidence at trial must show that "defendant killed in the heat of passion, the passion was caused by adequate provocation, and there was not a lapse of time during which a reasonable person could control his passions." *People v Reese*, 491 Mich 127, 143; 815 NW2d 85 (2012). In *People v Tierney*, 266 Mich App 687, 714-715; 703 NW2d 204 (2005), this Court considered the elements of voluntary manslaughter and found that "[t]he degree of provocation required to mitigate a killing from murder to manslaughter is that which causes the defendant to act out of passion rather than reason." (Internal quotation marks omitted.) The *Tierney* Court held that "[i]n order for the provocation to be adequate[,] it must be that which would cause a reasonable person to lose control." *Id*. at 715 (citation omitted; internal quotation marks omitted). Provocation by mere words is generally insufficient to constitute adequate provocation. *People v Pouncey*, 437 Mich 382, 391; 471 NW2d 346 (1991). The Michigan Supreme Court has found that if the defendant has a sufficient "cooling-off period," the defendant has not established the necessary "heat of passion." *Id*. at 392 (finding that 30 seconds was an adequate "cooling-off period").

Regarding defendant's claim that the jury should have been instructed on involuntary manslaughter, a rational view of the evidence must support a finding of that lesser charge. *Cornell*, 466 Mich at 357. "Involuntary manslaughter is the unintentional killing of another, without malice, during the commission of an unlawful act not amounting to a felony and not naturally tending to cause great bodily harm; or during the commission of some lawful act, negligently performed; or in the negligent omission to perform a legal duty." *Mendoza*, 468

[3] Again, we note that Supreme Court orders, like the one in *McMullan*, which "include a decision with an understandable rationale establish binding precedent." *Giovannini*, 271 Mich App at 414.

Mich at 536. "Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998).

Addressing each instruction in turn, the trial court did not abuse its discretion in finding that the requested instructions for voluntary manslaughter and involuntary manslaughter were inapplicable to the facts of the instant case. *Gillis*, 474 Mich at 113. First, the facts of the case did not support an instruction for voluntary manslaughter because defendant did not kill Wiley in the heat of passion after adequate provocation. *Reese*, 491 Mich at 143. Defendant's own testimony at trial showed that defendant, not Wiley, provoked the instant altercation by sending a threatening text message to Wiley earlier in the day, and then showing up to Wiley's home later that night armed with a gun. If anything, the testimony tended to show that Wiley was acting in response to provocation when he came "aggressively" out his own front door to confront defendant. Thus, a rational view of the evidence elicited at trial does not support a jury instruction on voluntary manslaughter, *Cornell*, 466 Mich at 357, and the trial court did not abuse its discretion in denying defendant's request, *Gillis*, 474 Mich at 113.

Second, the facts of the case also did not rationally support an instruction for involuntary manslaughter because defendant's own testimony shows that he acted with malice, i.e., "in wanton and wilful disregard of the likelihood that the natural tendency of [his] behavior [was] to cause death or great bodily harm." *Goecke*, 457 Mich at 464; see also *Mendoza*, 468 Mich at 541 ("[A]n instruction for . . . involuntary manslaughter must be given if supported by a rational view of the evidence."). Again, defendant's own testimony provided that defendant was struggling with Wiley over the gun and once he felt like he was losing his grip on the gun, he "pulled the trigger." By pulling the trigger on his firearm, while aimed at Wiley, defendant acted in wanton and wilful disregard of the likelihood that his actions would cause Wiley's death or result in great bodily harm. *Id*. On that basis, the evidence did not rationally support an instruction for involuntary manslaughter, *Cornell*, 466 Mich at 357, and the trial court did not abuse its discretion in denying defendant's request, *Gillis*, 474 Mich at 113.

## III. SPEEDY TRIAL

Finally, defendant contends that the trial court violated his constitutional right to a speedy trial and his statutory right to be tried within 180 days. Again, we disagree.

To preserve a speedy trial issue for appeal, a defendant must make a formal demand for a speedy trial on the record. *People v Cain*, 238 Mich App 95, 111; 605 NW2d 28 (1999). Defendant never made a formal demand for a speedy trial in the lower court. Therefore, this issue is not preserved for appeal.

Whether a defendant was denied a speedy trial is a mixed question of fact and law. *People v Waclawski*, 286 Mich App 634, 664; 780 NW2d 321 (2009). Generally, the trial court's factual findings are reviewed for clear error, while the constitutional issue is a question of law that this Court reviews de novo. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006). Further, this Court generally reviews de novo the trial court's interpretation and application of the 180-day rule. *People v McLaughlin*, 258 Mich App 635, 643; 672 NW2d 860 (2003). However, because defendant did not preserve this issue for appeal, this Court's review is

for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130 (1999).

A defendant has the right to a speedy trial under both the United States Constitution and the Michigan Constitution. US Const, Am VI; Const 1963, art 1, § 20; *Waclawski,* 286 Mich App at 665. The right to a speedy trial is not confined to a delay of any specific number of days. *McLaughlin*, 258 Mich App at 644. "Whether an accused's right to a speedy trial is violated depends on consideration of four factors: (1) the length of delay, (2) the reason for delay, (3) the defendant's assertion of the right, and (4) the prejudice to the defendant." *People v Rivera*, 301 Mich App 188, 193; 835 NW2d 464 (2013) (internal quotation marks omitted). "The time for judging whether the right to a speedy trial has been violated runs from the date of the defendant's arrest." *People v Williams*, 475 Mich 245, 261; 716 NW2d 208 (2006). A delay of six months is necessary to trigger an investigation by the courts into a claim that a defendant has been denied a speedy trial. *People v Walker*, 276 Mich App 528, 541; 741 NW2d 843 (2007), vacated in part on other grounds 480 Mich 1059 (2008), overruled in part on other grounds by *People v Lown*, 488 Mich 242; 794 NW2d 9 (2011). The defendant must prove prejudice when the delay is less than 18 months. *Waclawski*, 286 Mich App at 665. In assessing the reasons for any delays, each period of delay is examined and attributed to either the prosecutor or the defendant, *Walker*, 276 Mich App at 541-542, and unexplained delays are attributed to the prosecutor, *Waclawski*, 286 Mich App at 666.

The 180-day rule, codified in MCL 780.131, provides, in pertinent part:

> Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint.

MCL 780.131 imposes the 180-day rule only when the defendant is already sentenced to a state prison; the rule does not affect charges against inmates incarcerated in county jail while awaiting trial. *McLaughlin*, 258 Mich App at 643.

Here, defendant misstates and conflates the rule on appeal by applying the time standard from the statutory 180-day rule, MCL 780.131, to his contention that his constitutional right to a speedy trial, US Const, Am VI; Const 1963, art 1, § 20, was violated. As noted above, the 180-day rule only applies if a defendant is already serving a sentence in a state prison. *McLaughlin*, 258 Mich App at 643. Here, there is no indication that defendant was already serving a prison sentence, as he was arrested outside a home in Detroit with no other charges pending, and defendant has provided no evidence that he was incarcerated in a state prison, rather than a county jail, at any time relevant to this case. Therefore, the 180-day rule does not apply.

Second, defendant's right to a speedy trial was not violated because defendant has presented no evidence of prejudice. The first factor to be considered when a defendant alleges

that his right to a speedy trial has been violated is the length of the delay, *Rivera*, 301 Mich App at 193, as measured from the date of defendant's arrest, *Williams*, 475 Mich at 261. Defendant was arrested on June 4, 2013, and his trial was completed when he was convicted on January 27, 2014. Seven months and 24 days passed between defendant's arrest and the conclusion of his trial. Because this delay is greater than six months, this Court may investigate defendant's claim that he has been denied a speedy trial, *Walker*, 276 Mich App at 541, but the burden is on defendant to prove prejudice, *Waclawski*, 286 Mich App at 665.

The second factor to consider is the reason for the delay. *Rivera*, 301 Mich App at 193. The parties agree that the reason for the delay was likely docket congestion. Though the ultimate responsibility for delays inherent in the court system, such as docket congestion, rests with the prosecution, these types of delay "are given a neutral tint and are assigned only minimal weight in determining whether a defendant was denied a speedy trial." *People v Gilmore*, 222 Mich App 442, 460; 564 NW2d 158 (1997) (internal quotation marks omitted). Therefore, this factor weighs minimally in defendant's favor.

The third factor to consider is defendant's assertion of his right to a speedy trial. *Rivera*, 301 Mich App at 193. As the parties both agree, defendant never asserted his right to a speedy trial below. A defendant's failure to promptly assert his right to a speedy trial weighs against his subsequent claim that he was denied the right. *People v Rosengren*, 159 Mich App 492, 508; 407 NW2d 391 (1987). Therefore, this factor weighs against defendant.

Finally, the fourth factor to be considered is the prejudice to the defendant resulting from the delay. *Rivera*, 301 Mich App at 193. A defendant can experience two types of prejudice while awaiting trial: prejudice to the person results when pretrial incarceration deprives an accused of many civil liberties, and prejudice to the defense occurs when the defense might be prejudiced by the delay. *Williams*, 475 Mich at 264. The latter prejudice is the more crucial in assessing a speedy trial claim. *Id*. A general allegation of prejudice caused by delay is generally insufficient to establish that a defendant was denied his right to a speedy trial. *Gilmore*, 222 Mich App at 462. Here, defendant "does not offer much of an explanation regarding how he was prejudiced by the delay," *Waclawski*, 286 Mich App at 668, except that his request for the discovery of Williams's cellular phone records, discussed momentarily at a pretrial hearing only a week before trial, "fell on deaf ears." Defendant maintains that he could have personally obtained the phone records had he been released from prison. Even if defendant's unsupported claim was true, a general allegation of prejudice caused by delay, such as the unspecified loss of evidence, is insufficient to establish that a defendant was denied his right to a speedy trial. *People v Cooper*, 166 Mich App 638, 655; 421 NW2d 177 (1987). Because defendant is unable to prove prejudice resulting from this seven-month delay between his arrest date and the conclusion of trial, he is unable to prove any plain error affecting his substantial rights, *Carines*, 460 Mich at 752-753, 763-764, and his claim fails.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Stephen L. Borrello